

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT – LOS ANGELES

In the Matter of	)	Case Nos.: <b>12-O-15031-DFM (12-O-17071;</b>
	)	<b>13-O-13217)</b>
<b>DAVID ROBERT BAADE,</b>	)	
	)	<b>DECISION AND ORDER OF</b>
<b>Member No. 46509,</b>	)	<b>INVOLUNTARY INACTIVE</b>
	)	<b>ENROLLMENT</b>
<u>A Member of the State Bar.</u>	)	

Respondent David Robert Baade (Respondent) was charged with 13 counts of misconduct stemming from three matters. Respondent failed to participate either in person or through counsel, and his default was entered. The Office of the Chief Trial Counsel of the State Bar of California (State Bar) filed a petition for disbarment under rule 5.85 of the Rules of Procedure of the State Bar.<sup>1</sup>

Rule 5.85 provides the procedure to follow when an attorney fails to participate in a disciplinary proceeding after receiving adequate notice and opportunity. The rule provides that, if an attorney's default is entered for failing to respond to the notice of disciplinary charges

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<sup>1</sup> Unless otherwise indicated, all references to rules in this Decision and Order are to the Rules of Procedure of the State Bar, which were in effect from January 1, 2011 through June 30, 2014. Although amendments to the default rules were effective July 1, 2014, as Respondent's default was entered prior to the effective date of the rule amendments, the rules in effect from January 1, 2011 through June 30, 2014, are the operative rules in this matter.

(NDC) and the attorney fails to have the default set aside or vacated within 180 days, the State Bar will file a petition requesting the court to recommend the attorney's disbarment.<sup>2</sup>

In the instant case, the court concludes that the requirements of rule 5.85 have been satisfied and, therefore, grants the petition and recommends that Respondent be disbarred from the practice of law.

### **FINDINGS AND CONCLUSIONS**

Respondent was admitted to practice law in this state on June 26, 1970, and has been a member since then.

#### **Procedural Requirements Have Been Satisfied**

On December 11, 2013, the State Bar properly served the Notice of Disciplinary Charges in this matter (NDC) on Respondent by sending it by certified mail, return receipt requested, to his official membership records address. (Bus. & Prof. Code,<sup>3</sup> § 6002, subd. (c) [service of NDC is effective on certified mailing of it to member's official membership address].) The NDC was filed with the State Bar Court on December 13, 2013. The NDC notified Respondent that his failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.41.) On January 15, 2014, the NDC was returned to the State Bar by the U.S. Postal Service, stamped "Return to Sender, Unclaimed, Unable to Forward."

In addition, the State Bar made numerous attempts to contact Respondent. On February 3, 2014, the State Bar's Senior Trial Counsel, who was assigned to this matter, sent a letter to Respondent requesting a response to the NDC by February 7, 2014. Included with the letter was a courtesy copy of the NDC. The letter and courtesy copy of the NDC were sent to Respondent

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<sup>2</sup> If the court determines that any due process requirements are not satisfied, including adequate notice to the attorney, it must deny the petition for disbarment and take other appropriate action to ensure that the matter is promptly resolved. (Rule 5.85(E)(2).)

<sup>3</sup> Unless otherwise noted, all future references to section(s) will be to the Business and Professions Code

at his official membership records address by regular first class mail. This letter and courtesy copy of the NDC were not returned to the State Bar. In addition, the February 3, 2014 letter and copy of the NDC were also faxed to Respondent at his official membership records fax number. The facsimile transmission confirmation page, however, indicated that there was no answer at Respondent's fax number. Further, on February 3, 2014, the Senior Trial Counsel successfully sent an email to Respondent at his official membership records email address, requesting that Respondent provide his response to the NDC by February 7, 2014. This email included a courtesy copy of the NDC as an attachment.

The Senior Trial Counsel also attempted to reach Respondent at his official membership records telephone number, but was informed that the number was no longer in service. As a result, on February 3, 2014, the Senior Trial Counsel called directory assistance for the area including Respondent's official membership records address and asked for all telephone listings for Respondent. The Senior Trial Counsel was informed that directory assistance had no listings for Respondent.

Because Respondent was on then probation in another State Bar matter, the Senior Trial Counsel also contacted Respondent's assigned probation deputy to ascertain whether Respondent's profile included any additional address for Respondent. The Senior Trial Counsel was advised that there were no new addresses included in his profile.

Respondent then failed to file a response to the NDC. On February 7, 2014, the State Bar filed and properly served on Respondent a motion for entry of his default by mailing it via certified mail, return receipt requested, to his official membership records address. The motion complied with the requirements for a default, including a supporting declaration of reasonable diligence by the Senior Trial Counsel declaring the additional steps taken to provide actual notice to Respondent (Rule 5.80.) The default motion notified Respondent that, if he did not timely

move to set aside his default, the court would recommend his disbarment. (Rule 5.80.)

Respondent did not file a response to the motion, and his default was entered on March 26, 2014.

The order entering the default was properly served on Respondent at his membership records address by certified mail, return receipt requested.<sup>4</sup> The court also ordered Respondent's involuntary inactive enrollment as a member of the State Bar pursuant to section 6007, subdivision (e), effective three days after service of the order. He has remained inactively enrolled since that time.

Respondent has not sought to have his default set aside or vacated. (Rule 5.83(C)(1) [attorney has 180 days to file motion to set aside default].) On October 29, 2014, the State Bar filed and properly served the petition for disbarment on Respondent by certified mail, return receipt requested, to his membership records address. As required by rule 5.85(A), the State Bar reported in the petition that: (1) it has had no contact with Respondent since the default was entered on March 26, 2014; (2) there are no other investigation or disciplinary matters pending against Respondent; (3) Respondent has a record of discipline; and (4) the Client Security Fund has not made any payments resulting from Respondent's conduct. Respondent did not respond to the petition for disbarment or move to set aside or vacate the default. The case was then submitted for decision on February 11, 2015.

Respondent has two prior records of discipline.

On February 6, 1996, the State Bar Court filed an order imposing a private reproof with public disclosure on Respondent, effective February 22, 1996. Respondent stipulated that he repeatedly failed to inform his client of significant developments in the client's case in willful violation of section 6068, subdivision (m).

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<sup>4</sup> The return receipt, bearing an unintelligible signature, was received by the court on April 7, 2014.

Thereafter, pursuant to a Supreme Court order filed on April 27, 2010, Respondent was suspended from the practice of law in California for three years, stayed, and placed on probation for three years, on condition that he be suspended for first 90 days of his probation. Respondent stipulated that he: (1) willfully violated rule 4-100(A) of the State Bar Rules of Professional Conduct [commingling funds]; (2) willfully violated section 6106 [issuing checks drawn against insufficient funds]; and (3) willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct [failing to return an unearned fee].

### **The Admitted Factual Allegations Warrant the Imposition of Discipline**

Upon entry of a respondent's default, the factual allegations in the NDC are deemed admitted and no further proof is required to establish the truth of such facts. (Rule 5.82.) As set forth below in greater detail, the factual allegations in the NDC support the conclusion that Respondent is culpable as charged and violated a statute, rule or court order that would warrant the imposition of discipline. (Rule 5.85(E)(1)(d).)

#### **Case Number 12-O-15031 – The *Lin* Matter**

Count One – Respondent willfully violated rule 4-100(A) of the Rules of Professional Conduct (failing to maintain client funds in trust) by failing to maintain in his client trust account a balance of at least \$311,358.45<sup>5</sup> in client funds received for the benefit of a client and deposited into the trust account.

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<sup>5</sup> In Count One of the NDC, the proceeds to which Respondent's client was entitled, and which were received by Respondent on behalf of the client, were referred to as both \$311,358.48 and \$311,358.45. The court finds the minor discrepancy in the amount of the proceeds received for the client to be an error. As the error is de minimis, for the purpose of consistency throughout this matter, the court finds that the amount of the proceeds received on behalf of the client and the amount which Respondent deposited into his client trust account and which he was required to maintain in the trust account was "at least" \$311,358.45.

Count Two – Respondent willfully violated section 6106 (moral turpitude) by misappropriating client funds for his own purposes in the amount of \$311,224.34 between December 2003 and December 2005.

Count Three – Respondent willfully violated rule 4-100(B)(3) of the Rules of Professional Conduct (failing to render appropriate accounts of client funds) by failing to provide an accounting of the proceeds which he received on behalf of his client, even after the client made repeated requests for such an accounting.

Count Four – Respondent willfully violated rule 3-700(D)(1) of the Rules of Professional Conduct (failure to release client papers/property) by failing to return the client file despite the client's request for the file made on termination of Respondent's employment.

Count Five – Respondent willfully violated section 6068, subdivision (i) (failure to cooperate/participate in a disciplinary investigation), by failing to provide a substantive response to the State Bar's letter of July 30, 2012, requesting a response to the allegations of misconduct being investigated in case No. 12-O-15031, i.e., the *Lin* matter.

**Case Number 12-O-17071 – The *Futak* Matter**

Count Six – Respondent willfully violated Rules of Professional Conduct, rule 3-110(A) (failure to perform with competence), by failing to perform the legal services for which he was retained on March 10, 2008. Specifically, after having been employed by his client to file and prosecute a lawsuit against the homeowners' association with which the client was in dispute, Respondent intentionally, recklessly, or repeatedly failed to do so between March 10, 2008 and July 10, 2011.

Count Seven – Respondent willfully violated section 6068, subdivision (m) (failure to communicate), by not responding between October 4, 2010 and September 27, 2012, to his

client's reasonable status inquiries, which included nine written status inquiries and numerous telephonic status inquiries.

Count Eight – Respondent willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct (failing to refund unearned fees) by failing upon the client's termination of his employment to promptly refund unearned advanced fees in the amount of \$2,337.

Count Nine – Respondent willfully violated sections 6125 and 6126 (unauthorized practice of law), and 6068, subdivision (a) (duty to support the Constitution and laws of the United States and California), by holding himself out as entitled to practice law and/or by actually practicing law when he: (1) represented to his client that he was preparing a lawsuit on her behalf; (2) requested a meeting with the client for the purpose of providing legal advice to her; (3) promised to file a lawsuit as the client's attorney of record; (4) met with the client and provided legal advice to her regarding the lawsuit; (5) met with the client's representative regarding the lawsuit; and (6) prepared a pro per lawsuit on the client's behalf when he was not an active member of the State Bar.

Count Ten – Respondent willfully violated section 6106 (moral turpitude) by holding himself out as entitled to practice law and actually practicing law when he knew, or was grossly negligent in not knowing, that he was not an active member of the State Bar by: (1) requesting and receiving a filing fee from the client; (2) representing to the client that he was preparing a lawsuit on her behalf; (3) preparing and filing a pro per lawsuit on the client's behalf; (4) requesting a meeting with the client to provide legal advice to her; (5) advising the client that he would refile the lawsuit on her behalf; and (6) meeting with the client's representative regarding the lawsuit and promising to file a lawsuit as the client's attorney of record, thereby committing acts involving moral turpitude, dishonesty or corruption.

Count Eleven – Respondent willfully violated section 6106 (moral turpitude) by knowingly making false statements to a client and/or her representative.

Count Twelve – Respondent willfully violated section 6068, subdivision (i), by failing to participate and cooperate in a State Bar investigation by not providing any substantive response regarding the allegations of misconduct being investigated in case No. 12-O- 10771, i.e., the *Futak* matter, as requested in the two letters, the voicemail message, and the email, which the State Bar sent to Respondent and which were received by Respondent.

**Case Number 13-O-13217 – Probation Violation Matter**

Count Thirteen – Respondent willfully violated section 6068, subdivision (k) (failure to comply with conditions of probation), by: (1) failing to timely submit four quarterly reports; (2) failing to submit four additional quarterly reports; (3) failing to timely submit four Client Funds Certification/CPA reports; (4) failing to submit four additional Client Funds Certification/CPA reports; (5) failing to timely complete the State Bar Ethics School and provide to the Office of Probation proof of his completion of that school; and (6) failing to timely complete the State Bar Client Trust Accounting School and provide to the Office of Probation proof of his completion of that school.

Based on the above, the court concludes that the requirements of rule 5.85(E) have been satisfied and that Respondent’s disbarment is recommended.

**RECOMMENDATION**

**Disbarment**

The court recommends that respondent **David Robert Baade**, State Bar number 46509, be disbarred from the practice of law in the State of California and that his name be stricken from the roll of attorneys.

**Restitution**

The court also recommends that Respondent be ordered to make restitution to the following payees:

(1) Shu Chen Lin in the amount of \$311,224.34 plus 10 percent interest per year from December 1, 2005; and

(2) Christy Futak in the amount of \$2,337.11 plus 10 percent interest per year from September 27, 2012.

Any restitution owed to the Client Security Fund is enforceable as provided in Business and Professions Code section 6140.5, subdivisions (c) and (d).

**California Rules of Court, Rule 9.20**

The court also recommends that Respondent be ordered to comply with the requirements of California Rules of Court, rule 9.20, and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court order in this proceeding.

**Costs**

The court further recommends that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, such costs being enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

**ORDER OF INVOLUNTARY INACTIVE ENROLLMENT**

In accordance with Business and Professions Code section 6007, subdivision (c)(4), the court orders that **David Robert Baade**, State Bar number 46509, be involuntarily enrolled as an

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inactive member of the State Bar of California, effective three calendar days after the service of this decision and order. (Rule 5.111(D).)

Dated: February \_\_\_\_\_, 2015

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DONALD F. MILES  
Judge of the State Bar Court